

**STATE OF NEW MEXICO
BEFORE THE SECRETARY OF THE ENVIRONMENT**

**IN THE MATTER OF THE APPLICATION
OF CHACO COMPRESSOR STATION
(HARVEST FOUR CORNERS, LLC) FOR AN
AIR QUALITY PERMIT, NO. P239R3 (TITLE V)**

AQB 21-37

and

**IN THE MATTER OF THE APPLICATION
OF CARRACAS CDP COMPRESSOR STATION
(HARVEST FOUR CORNERS, LLC) FOR AN
AIR QUALITY PERMIT, NO. P168R4 (TITLE V)**

AQB 21-43

ORDER AMENDING SCHEDULING ORDER

WHEREAS, with all parties in attendance at the July 7, 2021 virtual scheduling conference, the undersigned Hearing Officer requested the parties brief the legal issue of whether 20.2.72.206.C. NMAC requires the public hearing in this consolidated matter be held in-person or virtually in the geographic area likely to be impacted by the source;

WHEREAS, on July 30, 2021, the governor entered Executive Order 2021-046 *Amended Order Requiring State Employees To Comply With Certain Public Health Requirements* finding inter alia, "one such highly-transmissible variant, B.1.617.2, commonly known as the Delta variant, now accounts for the majority of new infections; the State has recorded a significant increase in new COVID-19 cases in recent weeks, with cases expected to rise even further in the Fall and Winter months; the further spread of COVID-19 in the State of New Mexico poses a threat to the health, safety, and wellbeing of all New Mexicans."

WHEREAS, "Public hearings shall be held in the geographic area likely to be impacted by the source" does not define or prescribe how a public hearing must

“be held.” The plain language of the rule alone does not explicitly require hearings be held in-person;

WHEREAS, the Environment Department has offered to make available a regional office physically located within the “geographic area likely to be impacted by the source” that is appropriately equipped to accommodate in-person participation for members of the public;

WHEREAS, a virtual hearing would limit potential exposure to COVID-19 and expand the opportunity for public participation for immunocompromised and unvaccinated people.

WHEREAS, the overall intent of 20.2.72.206 is to ensure the public has an opportunity to participate in the proceeding and specifically members of the public in the area likely to be impacted by the source of pollution.

WHEREAS, Ensuring the public can adequately participate in hearings is fundamentally about due process, and in the administrative context due process is flexible in nature and responsive to the circumstances of a given situation, as a whole. *Alb. Bernalillo Co. Water Utility Authority v. NMPRC*, 2010-NMSC-013, ¶ 28, 148 N.M. 21, 34.

NOW, THEREFORE, by virtue of the authority vested in me by the Order Appointing a Hearing Officer entered as of record June 24, 2021, I hereby ORDER and DIRECT:

1. The July 19, 2021 Scheduling Order is hereby amended to accommodate members of the public who prefer to participate in-person. The Bureau shall provide a public space, such as a Department field office, where members of the public can use a Department computer, camera, and screen to view and participate in the virtual hearing. In addition, the

Department will provide wi-fi connections to those members of the public who chose to bring their own devices. The locations will be included in the public notice and posted on the Bureau's website.

Gregory
Chakalian



Digitally signed by
Gregory Chakalian
Date: 2021.08.06
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Gregory Chakalian
Administrative Law Judge, OPF

Certificate of Service

I hereby certify that on August 07, 2021 a copy of the Order Amending Scheduling Order was sent to the persons listed below:

Via Email:

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